Supreme Court, U.S.
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No. 90-875

In The

Supreme Court of the United States

October Term, 1990

CARNIVAL CRUISE LINES, INC.,

Petitioner,

vs.

BALBINO JIMENEZ GARAY,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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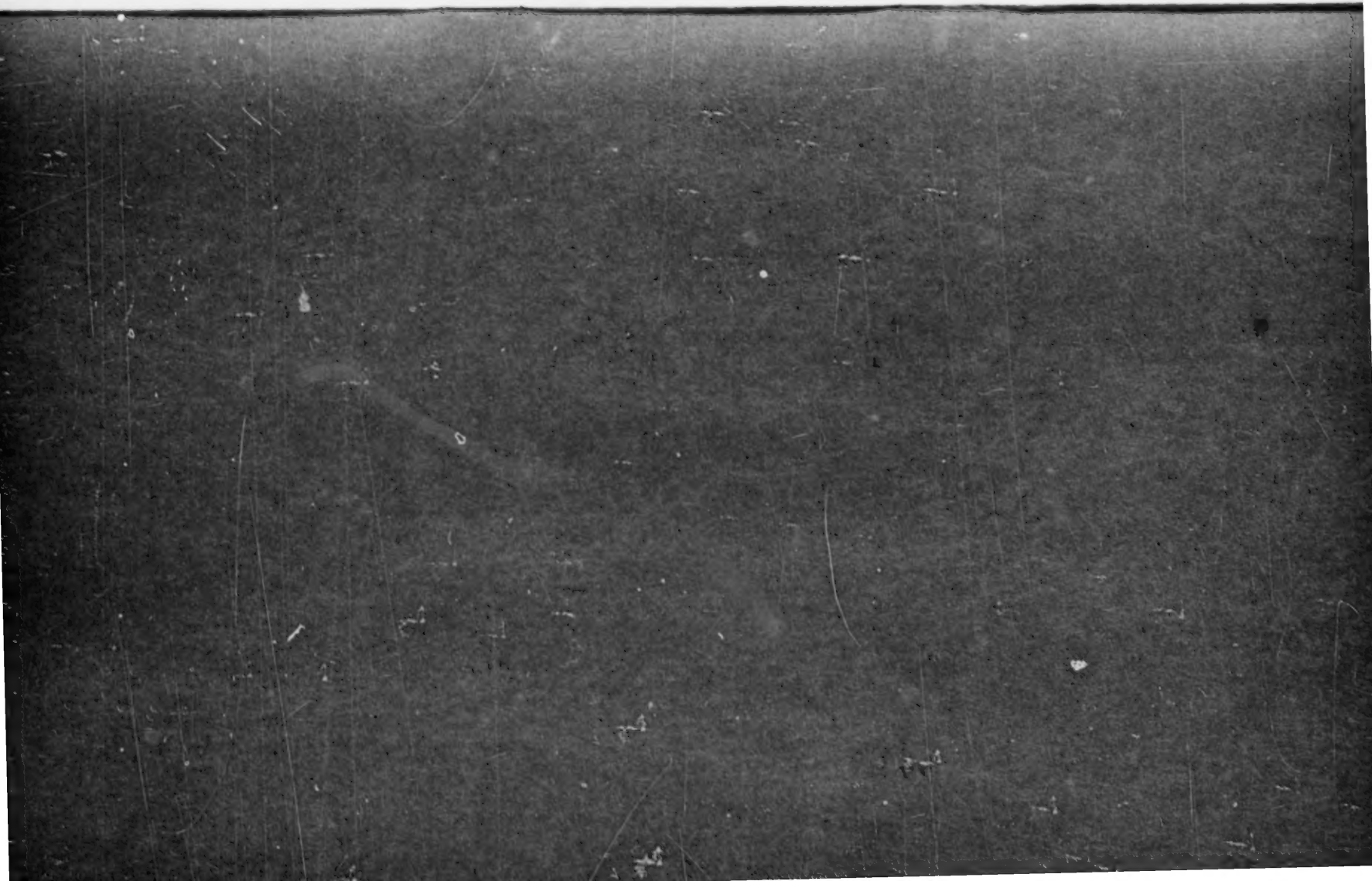

QUESTIONS PRESENTED

Respondent would respectfully submit that neither the decision below nor the facts contained in the record, raise the questions presented in the Petitioner's brief. Therefore, Respondent respectfully restates the questions presented that relate to this Court's discretionary jurisdiction to issue a Writ of Certiorari:

I.

WHETHER THE 11TH CIRCUIT COURT OF APPEALS CORRECTLY CONCLUDED THAT THE TRIAL COURT ERRED AS A MATTER OF LAW IN NOT DIRECTING A VERDICT ON THE DEFENSE OF WILFUL MISCONDUCT, AND, WHETHER THE DECISION OF THE 11TH CIRCUIT COURT OF APPEALS CONFLICTS WITH A DECISION OF ANOTHER U.S. CIRCUIT COURT OF APPEALS OR A DECISION OF THIS COURT. (PETITIONER SUBMITS THIS QUESTION ADDRESSES POINTS I & II RAISED BY PETITIONER).

II.

WHETHER PUNITIVE DAMAGES ARE RECOVERABLE WHERE A SHIPOWNER'S FAILURE TO PROVIDE MAINTENANCE AND CURE IS ARBITRARY AND WILFUL SO AS TO SUPPORT AN AWARD OF ATTORNEY'S FEES PURSUANT TO THIS COURT'S DECISION IN *VAUGHAN V. ATKINSON.*

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STATEMENT OF THE CASE

Respondent would submit that the appellate opinion in the instant case sets forth the material factual matters necessary for consideration by the Court whether to issue a Writ of Certiorari in this matter.

Respondent would emphasize the appellate court below concluded that there was insufficient evidence, as a matter of law, to support a finding of wilful misconduct sufficient to deny Respondent his right to maintenance and cure (App. 12). (Reference is made to the Appendix to the Brief of Petitioner).

The evidence below was that crewmembers were allowed to drink onboard the vessel, even to the point of drunkenness. There was no evidence that Respondent engaged in any sort of activity that was sanctioned by the Petitioner, or expressly prohibited. To the contrary, the testimony below was that Respondent had merely engaged in the sort of activity that most of the crewmembers onboard Petitioner's vessels engaged in. He merely engaged in the typical activities of a seaman.

REASONS WHY THE PETITION SHOULD BE DENIED

I.

THE DECISION BELOW CORRECTLY APPLIES THE LAW OF MAINTENANCE AND CURE, AND DOES NOT CONFLICT WITH ANY DECISION OF ANOTHER U.S. CIRCUIT COURT OF APPEALS, OR A DECISION OF THIS COURT.

The opinion below, and the testimony presented at trial, simply do not support the Petitioner's contention

that the 11th Circuit Court of Appeals has created a new exception to the defense of wilful misconduct in maintenance and cure actions. The 11th Circuit Court of Appeals correctly applied the principles of law applicable to maintenance and cure actions, and the decision in no way conflicts with any other decision of another U.S. Circuit Court of Appeals, or of a decision of this Court.

The decision below recognizes that wilful misconduct is a defense to a claim for maintenance and cure. The Court below relied on this Court's opinions in *Warren v. U.S.*, 340 U.S. 523, 71 S.Ct. 432, 95 L.Ed. 503 (1951), *Farrell v. U.S.*, 336 U.S. 511, 69 S.Ct. 707, 93 L.Ed. 850 (1949) and *Aguilar v. Standard Oil Co.*, 318 U.S. 724, 63 S.Ct. 930, 87 L.Ed. 1107 (1947).

As stated in the decision below, *Warren* requires " . . . positively vicious conduct – such as gross negligence or wilful disobedience of orders", before finding that a seaman will forfeit his right to maintenance and cure.

The paternalistic duty of a shipowner towards a crewmember was recognized by this Court in *Farrell.*

In *Aguilar,* this Court recognized that intoxication may constitute the type of conduct that would be sufficient to deny a seaman his right to maintenance and cure. However, in *Aguilar* it was recognized that intoxication may in fact constitute a classic predisposition of sailors, and that intoxication alone would not automatically forfeit a seaman's right to maintenance and cure. This Court cited to *The Quaker v. City* decision, 1 F. Supp. 840, (E.D. Penn. 1931), which held that the mere fact a seaman was

injured as a result of being intoxicated was not an automatic forfeiture of his right to maintenance and cure.

The decision below clearly re-emphasizes that intoxication may, under certain circumstances, constitute wilful misconduct sufficient to deny a seaman his right to maintenance and cure. The decision below merely held that under the facts presented in the instant case, the evidence was insufficient as a matter of law to support a finding that Respondent had engaged in conduct "positively vicious", or conduct that constituted "gross negligence or wilful disobedience of orders", sufficient to deny the Respondent his right to maintenance and cure.

Accordingly, Respondent would respectfully submit that there is no reason for this Court to grant a Writ of Certiorari. The decision below merely re-affirmed established principles of law in maintenance and cure actions, and was resolved based on the testimony presented in the instant case. The decision below does not create any new exception in the law of maintenance and cure, nor does it conflict with any decision of another U.S. Circuit Court of Appeals or a decision of this Court.

II.

THE DECISION BELOW DOES NOT INVOLVE A CASE WHERE PUNITIVE DAMAGES WERE AWARDED BUT MERELY REMANDS TO THE TRIAL COURT FOR A DETERMINATION OF WHETHER PUNITIVE DAMAGES SHOULD BE AWARDED UPON A VERY SPECIFIC FACTUAL FINDING BY THE TRIER OF FACT THAT THE FAILURE TO PROVIDE MAINTENANCE AND CURE WAS SO WILFUL AND ARBITRARY AS TO JUSTIFY PUNITIVE DAMAGES.

Petitioner inaccurately states that the decision below raises the question whether punitive damages are

recoverable for "any type" of failure by a shipowner to provide maintenance and cure.

The decision below merely reaffirms precedent in the 11th Circuit, see *Hines v. L.A. LaPorte*, 820 F. 2d 1187 (11th Cir. 1987), as well as precedent in the 1st Circuit, see *Robinson v. Pocahuntas, Inc.*, 477 F. 2d 1048 (1st Cir. 1973), and the 5th Circuit, see *Breece v. AWI, Inc.*, 823 F. 2d 100 (5th Cir. 1987).

It is true that the 2nd Circuit Court of Appeals has held that only attorney's fees are recoverable upon a finding of wilful and arbitrary failure to provide maintenance and cure, and that a seaman is not entitled to punitive damages in addition to an award of attorney's fees, and 5th Circuit, see *Kraljic v. Berman Enterprises, Inc.*, 575 F. 2d 412 (2d Cir. 1978). Therefore, there is a conflict with the 2nd Circuit Court of Appeals to the extent that the decision below holds that a seaman is entitled to both attorney's fees and punitive damages.

However, the decision below did not impose punitive damages upon the Petitioner; the decision below merely remands to the trier of fact to determine whether punitive damages are in fact justified under the facts and circumstances of this case. Until punitive damages are in fact imposed, Respondent would submit that the Court need not address the issue since the issue may become moot in the instant case if in fact punitive damages are not awarded.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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